

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
FINAL STATEMENT OF REASONS FOR REGULATORY ACTION

Amend Subsection (b)(91.1) of Section 7.50
Title 14, California Code of Regulations
Re: Klamath River Sport Fishing Regulations

- I. Date of Initial Statement of Reasons: January, 2004
 Date of Amended Initial Statement of Reasons: February 26, 2004
- II. Date of Pre-adoption Statement of Reasons: April 5, 2004
- III. Date of Final Statement of Reasons: May 14, 2004
- IV. Dates and Locations of Scheduled Hearings:
 - (a) Notice Hearing: Date: February 6, 2004
 Location: Long Beach
 - (b) Discussion Hearing: Date: March 5, 2004
 Location: Redding
 - (c) Discussion Hearing: Date: April 2, 2004
 Location: Sacramento
 - (d) Adoption Hearing: Date: May 4, 2004
 Location: San Diego
- V. Update:

The Pre-adoption Statement of Reasons indicated a range for the allowable quota of Chinook salmon to be harvested within the Klamath River basin because at the time a harvestable quota had not been determined by the Pacific Fisheries Management Council. At the adoption hearing on May 4, 2004, the Commission was notified that the PFMC had set the allowable harvest quota for adult Chinook salmon at 4,700. This number was inserted in the amended regulatory language and adopted by the Commission.

The Commission also adopted Option No. 2 for the New River which was not indicated in the proposed amended regulatory language in the Pre-adoption Statement of Reasons but was indicated in the Informative Digest as a possible option. New River Option No. 2 appears below.

New River Option No. 2: Allow fishing in the main-stem New River from the mouth upstream to the confluence of the East Fork from September 15 through November 15. Gear would be restricted to artificial lures with barbless hooks (no bait), and a zero bag would apply.

The upper most reaches of the New River (upstream of the confluence of the East Fork) contain approximately 30 percent of the adult summer steelhead holding pools. This area is extremely remote and very difficult to monitor. Because of the uncertainty and the potential negative impacts to adult summer steelhead that may occur from excessive angling, an option which maintains some protected areas would be beneficial. The Department considers this option the most conservative of the three options presented but does not afford the maximum protection for summer steelhead found in current regulations. This option would be consistent with the regulations that were in place prior to 1999 when the FGC adopted a complete angling closure on New River.

The Commission adopted all other amendments that were indicated in the Pre-adoption Statement of Reasons.

VI. Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting those Considerations:

See the Department's "SUMMARY AND ANALYSIS OF PUBLIC RECOMMENDATIONS REGARDING CHANGES TO INLAND SPORT FISHING REGULATIONS FOR THE KLAMATH RIVER Received from July 1, 2003 through May 4, 2004.

VII. Location and Index of Rulemaking File:

A rulemaking file with attached index is maintained at:
California Fish and Game Commission
1416 Ninth Street
Sacramento, California 95814

VIII. Location of Department files:

Department of Fish and Game
1416 Ninth Street
Sacramento, California 95814

IX. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change:

Alternative No. 1.

Allowable Fishing Seasons above the Highway 96 bridge at

Weitchpec: The Department is reviewing all available data and meeting with the public to develop seasons which will equitably distribute the quota of adult Chinook salmon among all in-river non-tribal user groups throughout the Klamath River basin above the Highway 96 bridge at Weitchpec. The development of seasons will help control Chinook harvest and ensure that the total impact quota for the Klamath River basin is not exceeded. This alternative can not guarantee that anglers will neither fall short of utilizing the quota or that they will exceed it.

Alternative No. 2.

Generally More Liberal Regulations (Bag Limits, Possession Limits and Fishing Methods) Than Those Proposed:

More liberal regulations would be less desirable than those proposed because they could create risk of an intense fishery reaching or exceeding the quota in a very short time. Reaching the quota in a very short time could be damaging to the local economy. Exceeding the allowable harvest could be damaging to the Klamath River basin Chinook salmon resource.

- (b) No Change Alternative with the exception of III (a) above **Change in Sub-Quota Boundary**: Maintain sub-basin monitoring and quotas. Current regulations divide equally the impact quota above the Highway 96 bridge at Weitchpec and the Trinity River. The area is further divided into three sub quotas; 1) the Highway 96 bridge at Weitchpec to 3,500 feet below Iron Gate Dam (17.0%), 2) the Trinity River from the confluence with the Klamath to Hawkins Bar (16.5%) and 3) the Trinity River from Cedar Flat to Old Lewiston Bridge (16.5%). The current harvest distribution requires the Department to estimate angler harvest of adult Chinook on a real-time basis. Due to budgetary constraints, the Department does not anticipate the ability to conduct real-time monitoring on Klamath River above the Highway 96 bridge at Weitchpec and the Trinity River upstream from the town of Willow Creek.
- (c) Consideration of Alternatives: In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective and less burdensome to the affected private persons than the proposed regulation.

X. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businessmen to Compete with Businesses in Other States: The proposed action will not have a significant statewide adverse economic impact affecting businesses, including the ability of California businesses to compete with businesses in other states. The preservation of Klamath River salmon stocks is necessary for the success of lower and upper Klamath River businesses which provide goods and services related to fishing. The proposed changes are necessary for the continued preservation of the resource and therefore the prevention of adverse economic impacts.
- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None.
- (c) Cost Impacts on Private Persons or Businesses: The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.
- (e) Other Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs Mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.
- (h) Effect on Housing Costs: None.

Updated Informative Digest/Policy Statement Overview

Hook Size Change for Anadromous Waters of the Klamath River System: Current regulations in subsection (b)(91.1)(A)2. of Section 7.50 define Special Fishing Methods Restrictions for all anadromous waters of the Klamath River below Iron Gate Dam. These requirements restrict the use of single barbless hooks having a gap between the point and shank greater than 5/8 inch; or, any multiple barbless hook having a gap between the point and shank greater than 1/2 inch. For clarification and in the interest of consistency, the Department is recommending language from Section 2.10, Hook and Weight Restrictions be substituted to subsection (b)(91.1)(A)2. of Section 7.50. This recommendation would define “Gap” and “Shank”, restrict the use of any multiple hooks with a gap greater than 3/4 inch or any hook with a shank longer than 2 inches, and restrict the use of any multiple hook or more than one single hook on non-buoyant lures exceeding one ounce. This recommendation will make fishing gear restrictions for all anadromous waters of the Klamath River system consistent with statewide restrictions for river and streams.

Quota Adjustment: Under current regulations in subsection (b)(91.1)(C), the allowable Chinook salmon harvest in the Klamath River system is based on spawning run-size predictions and spawning escapement goals. The harvest and the distribution of the catch are regulated by seasons, daily and weekly bag and possession limits, and area quotas and allocations.

Annual adjustment of the quota is necessary to meet natural and hatchery escapement needs for Klamath River fall-run Chinook salmon stocks, while providing equitable harvest opportunities for ocean (sport and commercial) and river (sport and tribal) users. The total river system recreational harvest of fall-run Chinook salmon is currently regulated by a quota. In 2003, the share, or impact quota, for the Klamath River basin allowable sport catch was 10,800 adult fish (26 percent of the total allowable harvest by non-tribal fisheries, including ocean-commercial, ocean-recreational and recreational-river fisheries).

Projections of the abundance of adult Klamath River fall-run Chinook salmon in the 2004 season are not yet available from the PFMC. However, preliminary examination of data available to Department staff suggests that the predicted 2004 adult fall-run Chinook salmon run will be less than the 2003 run. Consequently, the Department is suggesting that the Commission consider a 2004 quota for the river-recreational fishery less than that of last year, and for notice requirements, within a range of 1,200-25,000 adult Chinook salmon. The Commission also will consider modifying the share of the allowable catch allocated to the river recreational fishery (which was 26 percent in 2003). Adjustment of this share is included in the recommended 1,200-25,000 range of the quota. As in prior years, the river recreational fishing quota would be split evenly between fisheries above and below the boundary separating the Klamath River system sub-quota areas (see proposed boundary change below).

The Pre-adoption Statement of Reasons indicated a range for the allowable quota of Chinook salmon to be harvested within the Klamath River basin because at the time a harvestable quota had not been determined by the Pacific Fisheries Management Council (PFMC). At the adoption hearing the Commission was notified that the PFMC had set the allowable harvest quota for adult Chinook salmon at 4,700. This number was inserted into the amended regulatory language and adopted by the Commission.

Change in Sub-Quota Boundary: The Department is recommending that the physical landmark designating the lower and upper sub-quota area for the Klamath River Basin be changed from Coon Creek Falls to the Highway 96 bridge at Weitchpec. The boundary is used to divide evenly the impact quota for adult fall-run Chinook salmon harvest into two sub-quota areas within the Klamath River Basin. There are two Coon Creek tributaries to the Klamath River. One enters the Klamath River 6 miles below the Highway 96 bridge at Weitchpec and the second enters the Klamath River approximately 8 miles upstream from the Highway 96 bridge. The Department received several inquiries from anglers requesting additional information or clarification pertaining to which Coon Creek is referred to in the regulations. The Highway 96 bridge at Weitchpec is more identifiable and eliminates the confusion between the two Coon Creek tributaries. All regulatory language referencing Coon Creek Falls shall be changed to the Highway 96 bridge at Weitchpec. There will be no harvest impacts to anglers since the Klamath River Basin impact quota for fall-run Chinook salmon does not change.

Closures to Modify Allocations: Currently, the annual recreational impact quota is split evenly, with 50 percent of the quota allocated to the Klamath River below the Highway 96 bridge at Weitchpec (proposed boundary) and 50 percent to the remainder of the Klamath River Basin above the Highway 96 bridge at Weitchpec, including the Trinity River. Proposed regulations define three sub-quota areas above the Highway 96 bridge at Weitchpec. The three quotas ensure equitable harvest of adult fall-run Chinook in the upper Klamath and Trinity rivers.

The 2004 quota to be recommended by the PFMC is not currently known; however, it is expected to be less than that established for the 2003 season. All closures for adult Chinook salmon will be designed to maximize and distribute the harvest of adult fall-run Chinook salmon while managing the fishery within the impact quota. **Note: The 2004 quota for adult Chinook salmon was subsequently determined by the PFMC to be 4,700.**

The current quota system requires the Department to monitor angler harvest of adult Chinook in each sub-quota area on a real-time basis. Due to likely funding and personnel reductions, the Department will be unable to deploy adequate personnel to conduct harvest monitoring in the upper Klamath River above the Highway 96 bridge at Weitchpec and the Trinity River above Willow Creek for the 2004 season. Instead, the following recommendations are based on data analysis and management experiences

from previous years that estimate harvest in the upper reaches of the Klamath River Basin relative to known harvest in the lower Klamath River.

1. Klamath River Main Stem - Allowable Fishing Season from the Highway 96 bridge at Weitchpec to 3,500 feet below Iron Gate Dam: The Department has reviewed all available Klamath Chinook harvest and run-timing data for the Klamath River from several previous years. Based on this review, the Department has developed a Harvest Predictor Model (HPM) which incorporates creel data from the Klamath River from Iron Gate Dam downstream to the confluence with the Pacific Ocean. The HPM is driven by the positive relationship between the number of fall-run Chinook salmon harvested in the lower Klamath River and the number of fish harvested in the upper river. The HPM will allow the Department to implement fishing closures to ensure that anglers do not exceed established quota targets.

2. Upper Trinity River Main Stem - Allowable Fishing Season from Old Lewiston Bridge to the Highway 299 West Bridge at Cedar Flat: The Department has reviewed all available Trinity River Chinook harvest and run-timing data for this area. Based on this review, the Department has developed a HPM which incorporates creel data from the Klamath River from Iron Gate Dam downstream to the confluence with the Pacific Ocean. The HPM is driven by the positive relationship between the number of fall-run Chinook salmon harvested in the lower Klamath River and the number of fish harvested in the upper Trinity River. The HPM will allow the Department to implement fishing closures to ensure that anglers do not exceed established quota targets.

3. Lower Trinity River Main Stem - Allowable Fishing Season from Hawkins Bar Bridge (Road to Denny) Downstream to the Mouth of the Trinity: The Department has reviewed all available Trinity River Chinook harvest and run-timing data for this area. Based on this review, the Department has developed a HPM which incorporates creel data from the Klamath River from Iron Gate Dam downstream to the confluence with the Pacific Ocean and the Trinity River from Lewiston Dam downstream to the confluence with the Klamath River. The HPM is driven by the positive relationship between the number of fall-run Chinook salmon harvested in the lower Klamath River and the number of fish harvested in the lower Trinity River. The HPM will allow the Department to implement fishing closures to ensure that anglers do not exceed established quota targets.

Daily Bag Limit, Weekly Bag Limit and Possession Limit: The 2004 quota to be recommended by the PFMC is not currently known; however, it is expected to be less than that established for the 2003 season. The Department recommends maintaining current daily bag, weekly bag and possession regulations for the 2004 Klamath River sport fishery.

Upper Klamath River Special Wild Steelhead Harvest Area

Current regulations prohibit the harvest of wild steelhead in the Klamath-Trinity River system. During the mid-1990's, declines in wild steelhead populations were noted within the Klamath River system and regulations were imposed to limit the harvest of wild steelhead. During the past three years (2001-2003) various forms of evidence suggest that wild steelhead populations in the Klamath River have increased substantially since the mid-1990s.

Based on increases in wild steelhead populations in the main stem of the upper Klamath River the public has proposed to allow a limited harvest of wild steelhead in the upper reaches of the main stem Klamath River. The proposal suggests allowing anglers to harvest one adult wild steelhead per day, but no more than 3 per season, in the Klamath River from 3,500 feet below Iron Gate Dam to the Interstate 5 Bridge during a four-month period from November 1 through February 28. All other angling regulations pertaining to steelhead in the Klamath River and its tributaries will remain unchanged. The purpose of this proposal is to provide anglers with additional steelhead fishing opportunities.

The Department opposes the retention of one wild steelhead per day, three per year, in the upper eleven miles of the Klamath River between Iron Gate Dam and the Interstate 5 Bridge. A Memorandum of Agreement (MOA) with NOAA Fisheries, signed in March 1998, prevents the Department from recommending to the Commission the harvest of any wild adult steelhead in the Klamath River basin. The MOA was an attempt to protect depressed steelhead stocks in all watersheds north of the Russian River. Although Klamath River wild steelhead stocks appear healthy, the Department is obligated to honor the terms of the current MOA and oppose any recommendation for harvest of wild steelhead in the Klamath River.

The Commission did not adopt any changes for the increased harvest of wild steelhead in the upper Klamath River.

New River

Options to Open the New River to Angling: The Department supports maintaining the closure of the New River and other Trinity River summer steelhead holding tributaries. Plentiful angling opportunity exists to fish for wild summer steelhead in their migratory corridor of the main-stem Trinity river downstream of their summer holding habitat. This is consistent with the Department's policy to allow fishing for sensitive stocks only in migratory areas and not in holding areas.

The Department recognizes that substantial increases in returns of summer steelhead have occurred on the New River over the past three years, but is still concerned with highly variable returns between years and lack of adequate personnel resources to conduct necessary angler-impact monitoring.

The Commission has received written and oral testimony from members of the public recommending New River be opened to angling. At the December 5, 2003 Commission meeting, the Department was asked to develop options which would allow limited angling opportunities in the New River

Summer steelhead enter the New River starting in April and over-summer in deep pools until the first rains in late fall. A 1991 study found that many summer steelhead within the main-stem New River once within a pool remain in that same pool for up to seven months. These fish are extremely vulnerable and could possibly be stressed repeatedly if angling were allowed throughout the entire season. Subsequently, the Department and interested parties and angling groups have developed an option (Option No. 2) which would promote summer steelhead conservation while providing some amount of angling opportunities in the New River.

New River Option No. 1: No change option. The Department supports maintaining the closure of the New River and other Trinity River summer steelhead holding tributaries. Plentiful angling opportunity exists to fish for wild summer steelhead in their migratory corridor of the main-stem Trinity river downstream of their summer holding habitat. This is consistent with the Department's policy to allow fishing for sensitive stocks only in migratory areas and not in holding areas.

The Department recognizes that substantial increases in returns of summer steelhead have occurred on the New River over the past three years, but is still concerned with highly variable returns between years and lack of adequate personnel resources to conduct necessary angler-impact monitoring.

New River Option No. 2: Allow fishing in the main-stem New River from the mouth upstream to the confluence of the East Fork from September 15 through November 15. Gear would be restricted to artificial lures with barbless hooks (no bait), and a zero bag would apply.

The upper most reaches of the New River (upstream of the confluence of the East Fork) contain approximately 30 percent of the adult summer steelhead holding pools. This area is extremely remote and very difficult to monitor. Because of the uncertainty and the potential negative impacts to adult summer steelhead that may occur from excessive angling, this option maintains some protected areas in upper reaches of New River. This option would be consistent with the regulations that were in place prior to 1999 when the FGC adopted a complete angling closure on New River.

New River Option 1 is the preferred option by the Department.

The Commission adopted New River Option No. 2.

The Commission adopted all other amendments that were indicated in the Pre-adoption Statement of Reasons.